Supreme Court of the United States

OCTOBER TERM, 1902

No. 155

IN ERROR TO THE SUPREME COURT OF CALIFORNIA

JOHN E. SEXTON, PLAINTIFF IN ERROR

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA

BRIEF FOR PLAINTIFF IN ERROR

Plaintiff in error was convicted in the Superior Court of El Dorado County, State of California, of the crime of extortion upon an indictment which is as follows:

"IN THE SUPERIOR COURT OF THE COUNTY OF EL
"DORADO, STATE OF CALIFORNIA, THE 25TH DAY
"OF NOVEMBER, A. D. 1899.

"THE PEOPLE OF THE STATE OF CALIFORNIA
vs.
"JOHN E. SEXTON and S. H. BRIGGS.

"John E. Sexton and S. H. Briggs are accused by "the grand jury of said county of El Dorado, by this

"indictment, of the crime of extortion, committed as "follows, to wit:

"The said John E. Sexton and S. H. Briggs, prior to "the finding of this indictment, on or about the 20th "day of June, A. D. 1898, at the county of El Dorado, "State of California, did willfully, unlawfully and "feloniously obtain from one C. Greenwald certain "personal propery consisting of money, the property "of said C. Greenwald, to the amount and value of "thirty dollars, with the consent of said Greenwald "induced by the wrongful use and exercise upon him "of fear by means of a threat then and there made by "the said John E. Sexton and S H. Briggs to accuse "him, the said Greenwald, of the crime of having, in "violation of the laws of the United States of America, "sold and delivered cigars in a form other than a new "box not before used for the purpose of packing cigars "therein contrary to the form, force and effect of the "statute in such case made, and provided, and against "the peace and dignity of the people of the State of "California.

"ABE DARLINGTON,
"District Attorney.

ERRORS ASSIGNED.

The following constitute the errors relied upon in support of the prayer for reversal of the judgment, viz:

I.

That the Supreme Court of the State of California,

committed manifest error in deciding that Section 518 of the Penal Code of the State of California, is not in conflict with and not repugnant to the provisions of Section 1 of Article 3, and Section 1 of the Fourteenth Amendment of the Constitution of the United States, and Sections 711 and 5484 of the Revised Statutes of the United States.

II.

That by the judgment of the Superior Court in and for the County of El Dorado, and by the judgment of the Supreme Court of the State of California, affirming said judgment of the Superior Court, the plaintiff in error is deprived of his liberty without due process of law, and is denied the equal protection of the law; all of which is in violation of the provisions of Section 1 of the Fourteenth Amendment.

ARGUMENT.

Plaintiff in error submits three reasons wherein he alleges that he has been deprived of his liberty without due process of law and that he has been denied the equal protection of the law, in violation of the provision of the 14th amendment, by the State of California; involving

1st. The right of the general government to exercise exclusive jurisdiction over the crime of which plaintiff in error was convicted.

2nd. The right of the State to exercise police

regulations without authority derived from a statute of the State of California.

3rd. The giving by the State of extra-territorial force to a Penal Statute.

FIRST POINT.

The right of the general government to exercise exclusive jurisdiction over the crime for which plaintiff in error was convicted.

Upon both a motion and a demurrer to set aside the indictment in the trial Court, as appears by the record, it was contended by the plaintiff in error that the offense therein charged was one arising under first clause of the eighth section of the first article, of the Constitution of the United States, giving Congress the power to lay and collect taxes, and was cognizable, exclusively in the courts of the United States by virtue of Sections 711, 722, 3392, of the Revised Statutes of the United States and Section 777 of the Penal Code of California.

Section 777, Penal Code of California, is as follows:

SEC. 777. "Every person is liable to punishment, by the laws of this State, for a public offense committed by him therein, *except where it is by law cognizable exclusively in the courts of the United States.*"

"Penalties for fraud and delinquency are a part of the regulations belonging to the subject." Ex parte Siebold, 100 U. S. 371, and Congress in the exercises of constitutional power has for the protection of its

Internal Revenue enacted Section 5484 of the Revised Statutes and it is beyond the power of the State of California to impose any further conditions (Ah Cue, 101 Cal. 198.)

Nowhere in the Constitution or laws of the United States made in pursuance thereof, can it be said that authority has been conferred upon State courts to try cases arising under the Internal Revenue laws of the United States.

In the case of Tenn. *vs.* Davis, 100 U. S. 267, this Court said :

"Before the adoption of the Constitution, each State had complete and exclusive authority to administer by its courts, all the law, civil and criminal, which existed within its borders. Its judicial power extended over every legal question that could arise. But when the Constitution was adopted, a portion of that judicial power became vested in the new government created, and so far as thus vested it was withdrawn from the sovereignty of the State. Now the execution and enforcement of the laws of the United States, and the judicial determination of questions arising under them are confided to another sovereign, and to that extent the sovereignty of the State is restricted."

And concluding the opinion and in Ex Parte Siebold, 100 U. S. 398, the Court used the following language :

"The true doctrine, as we conceive, is this, that whilst the states are really soverign as to all matters which have not been granted to the jurisdiction and

control of the United States, the constitution and constitutional laws of the latter are, as we have already said, the supreme laws of the land; and, when they conflict with the laws of the states, they are of paramount authority and obligation. This is the fundamental principal on which the authority of the constitution is based; and unless it be conceded in practice, as well as theory, the fabric of our institutions as it was contemplated by its founders, cannot stand. The questions involved have respect not more to the autonomy and existence of the State, than to the continued existence of the United States as a government to which every American citizen may look for security and protection in every part of the land."

"If congress have a constitutional power to regulate a particular subject, and they do actually regulate it in a given matter and in a certain form, . . . in such a case the legislation of congress in what it does prescribe, manifestly indicates that it does not intend that there shall be any farther legislation to act upon the subject matter. (Prigg v. Pennsylvania, 41 U. S. 617.)" And in the same case at page 622 Mr. Chief Justice Marshall is referred to as having said: "Whereever the terms in which a power is granted to congress, or the nature of the power require that it should be exercised exclusively by congress, the subject is as completely taken from the state legislatures as if they had been forbidden to act."

"Every addition of power to the general government involves a corresponding diminution of the govern-

mental powers of the States. It is carved out of them."

Ex parte, Commonwealth of Virginia, 100 U. S. 339.

In the cases of Ableman *vs.* Booth, 21st Howard U. S., 506, Prigg *vs.* Penn., 41st U. S. 16, 539, Collector *vs.* Day, 78 U. S., 124, Tennessee *vs.* Davis, 100 U. S., 257, Ex Parte Commonwealth of Virginia, 100 U. S., 339, Ex Parte Siebold, 100 U. S., 371, Cunningham *vs.* Neagle; 135 U. S, 1. The question of state and federal sovereignties in their respective assigned spheres have been elaborately discussed and I have been unable in a single instance to ascertain either from the prevailing or dissenting opinions that a case of this character would not have been considered one of those arising under the Constitution of the United States and the laws made in pursuance thereof, over which the courts of the United States would have had exclusive jurisdiction.

The contention of plaintiff in error is supported in Ex parte Honghton, 7th Fed. Rep. 657, and in the following State decisions:

Com. *vs.* Fuller, 8 Met., 313.
Com. *vs.* Tenney, 97 Mass., 50.
Com. *vs.* Felton, 101 Mass., 204.
Com. *vs.* Ketner, 92 Pa. St., 372.
State *vs.* Tuller, 34 Conn , 280.
Com. *vs.* Feely, 1 Va. Cas., 321.
People *us.* Fonda, 62 Mich , 407.
Ex parte Ah Cue, 101 Cal., 198.

Mr. Justice Strong defining the police power of a

state in Railroad Company *vs.* Husen, 95 U. S. 465, 470, gives the following brief thereof:

"What that power is, it is difficult to define with sharp precision. It is generally said to extend to making regulations for promotion of domestic order, morals, health and safety," and Cooley, chapter 14, Sections 572 et seq. of his Constitutional Limitations says: "But whatever may be the nature and reach of the police power of a state, it cannot be exercised over a subject confided exclusively to congress by the federal constitution. It cannot invade the domain of the national government."

SECOND POINT.

The right of the State to exercise police regulations without authority derived from the statute of the State of California.

Section 518 of the Penal Code of California by virtue of which the State of California pretends to entertain jurisdiction of the case reads as follows:

Sec. 518. "Extortion is the obtaining of property from another, with his consent, induced by a wrongful use of force or fear, or under color of official right."

Section 519 of the Penal Code of California, reads as follows:

Sec. 519, Fear such as will constitute extortion may be induced by a threat, either, * * * 2nd. To accuse him or any relative of his, or member of his family, of *any crime.*

Section 15 of the Penal Code of California reads as follows:

Sec. 15. A crime or public offense, is an act committed or omitted in violation of a law forbidding or commanding it, and to which is annexed upon conviction either of the following punishments:

First: Death.

Second: Imprisonment.

Third: Fine.

Fourth: Removal from office; or

Fifth: Disqualification to hold or enjoy any office of honor, trust or profit in this state.

Section 6 of the Penal Code which took effect January 1st, 1873, is as follows:

Sec. 6. No act or omission commenced after twelve o'clock noon of the day on which this code takes effect as a law is *criminal or punishable*, except as is prescribed or authorized *by this code*, or by some statute which it prescribes as continuing in force and as not effected by its provisions or by some ordinance, municipal, county or township regulation passed or adopted under such statutes and in force when this code takes effect.

The purpose of citing the foregoing sections of the Penal Code is to show that the term *any crime* as used in section 519 means just what section 6 says and therefore the crime imputed to Greenwald, must have been defined by the laws of California and to which must have been annexed one of the penalties prescribed in Section 15.

The State of Cafifornia has by the enactment of sec-

tion 6 limited the term *Any Crime* in Section 519 to those defined by its own laws.

No one pretends to say that there is in existence among the criminal laws of California a provision similar in term to Section 3392 of the Revised Statutes of the United States and an examination of the indictment discloses the fact that the crime imputed to Greenwald was the one defined by that section of the Revised Statutes of the United States.

The jurisdiction of a state is co-extensive with its territory; co-extensive with its legislative power. U. S. *vs.* Bevans, 16 U. S. 3 Wheat. 336.

Plaintiff in error contends that every ingredient necessary to allege a complete criminal offense must be derived from the laws of the sovereignty seeking to enforce its police power, and that every government should contain within itself the means of its own preservation.

Admitting that the State might upon some pretended hypothesis attain jurisdiction of this class of a case, it must if at all treat it independent of any statute of the United States upon the same subject.

The Supreme Court of California in affirming the decision in this case says: "If he had threatened to have Greenwald arrested upon a charge of counterfeiting the money of this country, and was charged with the crime of extortion for that reason, clearly his offense would be one against the laws of the state."

There is no merit in this position at all. Section 477 of the Penal Code of California defines counterfeiting

as a crime and comes clearly within the purview of Section 6 of the Penal Code and therefore is a crime, such as is contemplated in Sub-division 2 of Section 519, Penal Code.

THIRD POINT.

The giving by the State of extra-territorial force to a Penal Statute.

It is not pretended that the State of California could punish plaintiff in error, were it not for the existence of Section 3392, Revised Statutes of the United States, which is *a Penal Statute*, and therefore its courts have given extra territorial force to a strictly *penal law*.

"Federal sovereignty, as well as the sovereignty of the States, is limited and restricted by the Constitution. Certain powers, legislative, executive and judicial, are possessed by each, independent of the other; and in the exercise of such powers all agree that they act as separately and independently of each other as if the line of division was traced by landmarks visible to the eye (Ableman *vs.* Booth, 21 How. 506, 516.)

"The general government and the States although both exist within the same territorial limit, are separate and distinct sovereignties, acting separately and independently of each other, within their respective spheres, the former in its appropriate sphere is supreme, but the States within the limits of their power not granted, or, in the language of the tenth amendment, reserved, are as independent of the general government

as that government within its sphere is independent of the States."

"Collector *vs.* Day, 78 U. S., 11 Wall, 124–126."

"Laws have no force of themselves beyond the jurisdiction of the State which enacts them and can have extra territorial effect only by the comity of other States. The general rules of international comity upon this subject were well summed up before the American Revolution by Chief Justice DeGrey as reported by Sir William Blackstone: "Crimes are in their nature local, and the jurisdiction of crimes is local. And so as to the rights of real property, the subject being fixed and immovable. But personal injuries are of a transitory nature and *sequuntur forum rei.* (Rafael *vs.* Verelst, 2 W. Bl. 1055, 1058.)

Crimes and offenses against the laws of any State can only be defined, prosecuted and pardoned by the sovereign authority of that State; and the authorities, legislative, executive or judicial, of other States take no action with regard to them, except by way of extradition to surrender offenders to the State whose laws have been violated, and whose peace they have broken".

Huntington *vs.* Attrill, 146 U. S. 657.
May's Crim. *vs.* Sec. 41.

"The rule that the courts of no country execute the penal laws of another applies not only to prosecutions and sentences for crimes and misdemeanors, but to all suits in favor of the State for the recovery of pecuniary penalties for any violation of statutes for the protection

of its revenue, or other municipal laws and to all judgments for such penalties."

Wisconsin *vs.* Pelican Insurance Co., 127 U. S., 265.

"It is a general principle, that the penal laws of one country cannot be taken notice of in another."

Story on Conflict, Section 620.

"The courts of one State will not notice the *penal or revenue* laws of another State."

Story on Conflict, Section 625 A.

In those cases where the general government and the states have heretofore punished for the same offense, neither sovereignty administered the law of the other wholly or partially but each possessed and exercised their police power independently of the existence of the other.

The State of California as admitted by its Supreme Court has imposed upon plaintiff in error an unreasonable and harsh judgment, while if the offense alleged against him had been committed in either of the States of Massachusetts, Pennsylvania, Connecticut or Michigan, he would have gone unmolested as far as the State Courts are concerned, and had he been put on trial in the United States Courts, the maximum penalty that could have been imposed would have been but half of that inflicted by the State in this instance.

In concluding this brief I desire to invite the attention of the Court to the case of Ableman *vs.* Booth, 21st Howard 514, wherein it was anticipated an injustice of this character might arise when the Court there said that if some of the states were not called to account they would be found extending their jurisdiction to cases arising under the Internal Revenue Laws and further said: "And it would often happen that an act which was admitted to be an offense in one state would be regarded as innocent in another and indeed praiseworthy in another."

Wherefore plaintiff in error prays that the judgment of the Supreme Court of the State of California be reversed.

Respectfully submitted,

J. E. SEXTON,

Plaintiff in Error,

In Propria Persona.